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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,682	08/07/2002	Ben Z. Cohen	1181-3 PCT/US	3571

7590 03/05/2004

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EXAMINER

BOMBERG, KENNETH

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,682

Applicant(s)

COHEN ET AL.

Examiner

Kenneth Bomberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1-50 and 52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/22 & 12/26/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-10 & 53, drawn to a pump including an inlet in communication with a reservoir.

Group II, claim(s) 11-17 & 53, drawn to a pump with a plurality of cantilevered fingers and a pin.

Group III, claim(s) 18-21 & 53, drawn to a pump with a seal mounted to a stem.

Group IV, claim(s) 22-24 & 53, drawn to a pump including a spring urging a stem toward a piston.

Group V, claim(s) 25-26 & 53, drawn to a pump with a passage with an enlarged cross section portion.

Group VI, claim(s) 27-30 & 53, drawn to a pump with a bumper between a stem and a nozzle.

Group VII, claim(s) 31-34 & 53, drawn to a pump including a ratchet tooth on a piston bearing against a stem.

Group VIII, claim(s) 35-36 & 53, drawn to a pump with a shroud with an opening registering with a and wiping a nozzle.

Group IX, claim(s) 37-40 & 53, drawn to a pump with a shroud with a plurality of cuts.

Group X, claim(s) 41-45, drawn to a pump including a shroud encompassing a void.

Group XI, claim(s) 46-48 & 53, drawn to a pump with a shroud having a

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relatively rotatable nozzle.

Group XII, claim(s) 49-50 & 53, drawn to a pump with a tubular handle.

Group XIII, claim(s) 51 & 53, drawn to a pump with a deflectable diaphragm.

Group XIV, claim(s) 52 & 53, drawn to a pump with nozzle cap formed with a radially extending seal member.

The inventions listed as Groups I-XIV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: In each of the Groups listed above, the identified special technical feature has been omitted from the independent claims of each of the other Groups listed above.

2. During a telephone conversation with Ludomir A. Budzyn on Wednesday, March 03, 2004 a provisional election was made without traverse to prosecute the invention of Group XIII, claims 51 and 53. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-50 and 52 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters corresponding to those in the specification have been omitted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The absence of reference characters in the drawings corresponding to those in the specification has precluded the specification from being checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

NOTE, THE ABSENCE OF REFERENCE CHARACTERS IN THE DRAWINGS
CORRESPONDING TO THOSE IN THE SPECIFICATION HAS HINDERED
INTERPRETATION OF THE CLAIMS IN VIEW OF THE SPECIFICATION. THE CLAIMS
HAVE BEEN REJECTED AS BEST UNDERSTOOD.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 51 is rejected under 35 U.S.C. 102(e) as being anticipated by Fuchs (6,062,430).

In Fig. 12, and column 17, line 45 to column 18, line 20, Fuchs teaches of a pump for dispensing fluid (Fig. 12), said pump comprising: a pump body (2m); a fluid reservoir (3m) formed in said pump body; and, a deflectable diaphragm (15m) mounted in a wall of said pump body, said diaphragm being deflectable into said fluid reservoir so as to decrease the volume encompassed by said fluid reservoir.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 53 as dependent on claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs (6,062,430) in view of Jouillat (5,388,727).

Fuchs shows a dispenser substantially according to claim 53, but does not specify the pump (40m) being a precompression pump according to the claim. Jouillat explicitly teaches in column 1, lines 5-14:

To dispense small predetermined quantities ("doses") of fluid, in particular semisolid substances such as pastes or creams, it is known to make use of

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manually-actuated pumps of the kind to be found in sprays, and more particularly precompression pumps

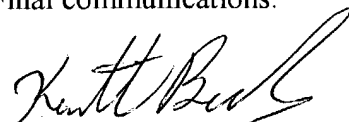
It would have been obvious to one having ordinary skill in the art to have used a precompression pump in the dispenser of Fuchs in order to dispense small predetermined quantities of fluid as taught by Jouillat.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining prior art listed on the attached FORM PTO-892 have been included because they show pump containers having deflectable diaphragms which decrease the volume of a pump reservoir.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is (703) 308-2179. The examiner can normally be reached on Monday-Thursday from 9:30 AM - 7:00 PM. The examiner can also be reached on alternate Fridays.

The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.


KENNETH BOMBERG
PRIMARY EXAMINER
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K.B.
March 4, 2004